

Minutes
Air Pollution Control Board
Indiana Government Center South
Conference Room C
402 West Washington Street
Indianapolis, Indiana

February 7, 2001
1:03 p.m.

1. Mr. John Walker, Chairman, called the meeting to order. He noted that a quorum was present.

CALL TO ORDER
QUORUM

2. Chairman Walker introduced the board members.

INTRODUCTION OF
MEMBERS

Present: Mr. John Walker, Chairman
Mr. Thomas Anderson
Dr. Phil Stevens
Mr. Randy Staley
Dr. James Miner
Mr. Marlow Harmon
Mr. Chris Horn
Ms. Melanie Darke, Proxy, Lieutenant Governor
Mr. John Bacone, Proxy, Department of Natural Resources
Mr. Howard Cundiff, Proxy, State Board of Health

Also present were Ms. Rachel McGeever, Legal Counsel; Mr. Tom Rarick, Technical Secretary; Timothy Method, Deputy Commissioner; Ms. Janet McCabe, Assistant Commissioner; Ms. Kathy Watson, Branch Chief; and Ms. Pat Daniel, Policy and Planning Section. Others are recorded on a separate sheet and made a part of this record. A court reporter was present and a transcript is available for review.

3. Mr. Method informed the board that the General Assembly is in session and IDEM is tracking different bills that relate to the environment. There was a bill introduced in both the House and Senate that deals with the existing fugitive dust rule. Another bill, Senate Bill 320, addresses the lead-based paint accreditation program; it has received a hearing on the Senate Environment Committee and IDEM is working with the sponsor on the specifics of that legislation.

REPORTS

4. Chairman Walker introduced Exhibit 1A, the rule as preliminary adopted, and Exhibit 1B, the rule as preliminarily adopted and proposed for final adoption with suggested changes, 326 IAC 8-12 and new rule 326 IAC 20-26, National Emissions Standards for Hazardous Air Pollutants Applicable to Ship Building and Ship Repair Surface Coating Operations, into the record of the hearing.

**PUBLIC HEARING
FOR FINAL
ADOPTION OF
AMENDMENTS TO
RULE 326 IAC 8-12,
AND NEW RULE 326
IAC 20-26, National
Emissions Standards
for Hazardous Air
Pollutants Applicable to
Ship Building and Ship
Repair Surface Coating**

Ms. Pat Daniel stated that the purpose of the rulemaking is to incorporate the federal emission standards for hazardous air pollutants applicable to ship building and ship repair surface coating operations. IDEM is incorporating the rule as EPA finalized it. Additionally, IDEM proposes to remove duplicative and overlapping VOC requirements from 326 IAC 8-8. IDEM proposed in the preliminary rule that the source meet the more stringent of the two requirements. There were no substantive changes to this rule since the preliminary adoption; there were some minor clarifications. Ms. Daniel asked the board to adopt the rule.

Mr. Cundiff moved to adopt the amendments to rule 326 IAC 8-12 and new rule 326 IAC 20-26. Mr. Anderson seconded the motion. The motion passed unanimously.

Mr. Anderson moved to final adopt the amendments to rule 326 IAC 8-12 and new rule 326 IAC 20-26. Dr. Miner seconded the motion. The motion passed 10-0.

5. Chairman Walker introduced Exhibit 2, the draft rules, 326 IAC 10, Nitrogen Oxide Emissions, into the record of the hearing.

**PUBLIC HEARING
FOR PRELIMINARY
ADOPTION OF NEW
RULES 326 IAC 10-3 for
the Control of Nitrogen
Oxides Emissions from
Specific Source
Categories, and 326 IAC
10-4, for the
Establishment of a
Nitrogen Oxide Budget
Trading Program**

Ms. McCabe informed the board of changes in the rule that were made since the second notice. Ms. McCabe stated that IDEM will be adding EPA's model language as a placeholder because of a number of substantive issues that still needed to be worked out. She explained the difference between the second notice and the rule that was placed before them. Ms. McCabe made a slide presentation during the meeting and explained in further detail the rule. The Legislative Services Agency response to the fiscal analysis that IDEM prepared on the rule was given to the board members. LSA accepted the estimates that IDEM submitted. The rule presented today and the rule that will be final adopted will not be exactly the same as the second notice and IDEM will inform the board of any significant changes in

cost, whether increased or decreased. An actual copy of the logbook of comments received during the time of the second notice was handed out to the board members. Ms. McCabe re-emphasized to the board that the meeting was a preliminary adoption hearing. IDEM will be working with EPA on several key issues. There are some areas where IDEM believes that EPA's model language is overly constraining or will unnecessarily lead people to incur costs. When the rule comes before the board for final adoption, many of those issues should be resolved. There is a pending federal court action relating to the utility units that are subject to EPA's Section 126 rulemaking which is a parallel rulemaking that affects many utility sources in the eastern part of the state, not all of them in Indiana, that requires essentially the same thing as this state rule.

Ms. McCabe stated that EPA had been sued on the Section 126 rulemaking and that there was no decision from the court on the matter as of today's date. There are some concerns among the sources that are subject to Section 126 that IDEM may go ahead with a rule that will be inconsistent with an ultimate federal decision or there may be some change in EPA's direction.

Ms. McCabe reminded the board that the rule is only up for preliminary adoption. If there are developments in the court case before the rule is brought to the board as a final rule, IDEM will discuss any needed adjustments.

IDEM does not believe that EPA has any intention of changing direction on this rule. A number of states have this type of rule in place. IDEM is confident that the requirement is going to remain in place.

IDEM has passed the federal court deadline of October, 2000 for adoption of the NOx rule. Another deadline relates to the ozone attainment plan for Lake and Porter counties which relies heavily on this rule, as the way to get those counties into attainment of the ozone standard. The plan was filed at the end of the year. It was late. It did not have the NOx rule with it, and EPA has informed IDEM that the NOx rule needs to be done by this summer in order to make the attainment plan complete. If the state doesn't continue to move in good faith, EPA will do a federal implementation of the NOx rule for Indiana.

The NOx rule has received more public interest than any rule to date. The tally is 364 comments, both letters and e-mails, of which 300 or more came from citizens. This shows an extraordinary amount of interest in the importance of clean air measures for the state.

Ms. McCabe noted that as a matter of principle IDEM wants the rule to be as cost-effective as possible and that the rule does not require sources generally to do more that EPA would have expected them to do. If IDEM believes that there is a more sensible or cost-effective way to accomplish something in the rule and still meet the environmental goal, IDEM will push on EPA while keeping costs in mind. IDEM also needs to balance the policy issues relating to new sources, existing sources, innovative technologies, and the various mix of interests that come into play in this rulemaking.

Another principle is a trading program that is consistent with the trading program of all of the other states in order to simplify trading. An overall principle is to have a rule that EPA will approve so that IDEM doesn't risk having a federal plan.

Ms. McCabe gave a slide presentation of the history of the rule describing five key issues:

- S the inventory itself;
- S the methodology that is included in the rule for how the allowances will be allocated;
- S the set-asides;
- S the compliance supplement pool; and
- S the Section 126 rule

The NOx rule will achieve more than a hundred thousand tons of reductions of NOx, which is a significant air quality improvement for the state. IDEM believes that the right categories are included within the rule:

- S the electric generating units [included in the rule];
- S large boilers [included in the rule];
- S miscellaneous category, which contains about 500 different sources of more than 30 or 35 source category types [not included in the rule];
- S small boilers [not included in the rule];
- S large cement kilns [included in the rule]; and
- S engines [will be subject to a separate rulemaking].

Another chart compared the EPA inventory with IDEM's inventory. EPA went through several iterations of developing an inventory and invited states and sources to comment; IDEM did comment.

When the rulemaking language was about to be put into place, IDEM expressed concerns to EPA regarding inclusion of sources in EPA's inventory. Once EPA realized that there were significant errors in their inventory, they felt that it was important to correct those errors too.

Significant changes were made to the inventory categories rather than the numbers. Examples include: 1) EPA characterized the Perry K facility of Indianapolis Power & Light, as a small electric generating unit. IDEM strongly feels that it should be characterized as a large boiler. 2) EPA didn't include the boilers at Bethlehem Steel in the large boiler category. IDEM believes that these should have been included. 3) EPA had mistakenly included some small boilers in the large boiler category which threw the numbers off. EPA agreed with IDEM that a correction among the numbers was necessary.

The following two sources were in the correct category but their emissions were significantly over or under estimated: 1) New Energy, which is a facility located in northern Indiana. EPA

had overestimated their emissions by thousands of tons. 2) ALCOA, located in southwestern Indiana, EPA had underestimated their emissions. EPA agreed to correct those numbers.

Ms. McCabe explained that EPA made assumptions to generate the trading budgets for the large boiler category and the utility category. Within the large utility category, they assumed that all of those utilities would operate at a .5 pounds per million Btu rate. They assumed reductions of 60 percent, category-wide for those. EPA and IDEM have agreed that changes within the numbers are necessary.

Ms. McCabe showed a series of slides that explains how the allowances, as determined by the Indiana trading budget, would be allocated to the affected sources under the proposed rule. She also explained that there is a set-aside for new sources. There is a set-aside for energy efficiency and renewable energy projects that are highly efficient, low polluting technologies for energy production. There is a compliance supplement pool to provide a little bit of assurance to sources if they could not meet the compliance deadline. Finally, Ms. McCabe suggested addressing the 126 rule by having the state rule provide that it applies to 126 sources beginning May 1, 2004, and this would provide a starting place for 126 transition.

Mr. Ben Henneke, President of the Clean Air Action Corporation, distributed handouts to each board member. Mr. Henneke commented on the rulemaking by expressing concerns of how the rule was going to be implemented and the cost of that implementation. He suggested that the board focus on making sure that we are getting the tons of NOx emissions out of the air and allowing flexibility about where sources control those tons of emissions.

Mr. Dan Weiss, Cinergy Corporation, submitted a handout and asked the board to change the rule language in the applicability section of the rule to the language in the previous version that exempted from the NOx rule sources that are subject to the Section 126 Rule. This change would lower utility compliance planning costs while still meeting the same air quality objective. Mr. Weiss asked the board not to place Indiana utilities in the position of trying to comply with two different compliance plans for duplicative but not entirely consistent programs. He asked the board to have sources be given an economic incentive to reduce their emissions earlier. Mr. Weiss asked the board to reduce potential electrical power reliability concerns and lower the cost of the program to Indiana consumers by doubling the size of the compliance supplement pool from 19,915 tons to 39,830 tons to cover the large number of additional SCRs that are expected to build in the state. With respect to allocation language, Cinergy requested that the rule language be allowed to average the highest two years of heat input between 1995 and 2000. Cinergy supports the current two percent energy efficiency set-aside but has concerns with the renewable energy component. Cinergy supports efforts to expand the rule to allow sources who do not meet the definition of a utility or large affected units, but who make voluntary NOx reductions, to get credit for making those reductions.

Mr. Tony Sullivan, representing Indiana-Kentucky Electric Corporation (IKEC), submitted a handout and asked the board not to preliminarily adopt the rule at this time, but instead provide

sufficient additional time to allow IDEM personnel to engage in discussions with the new EPA administration regarding Section 126, and its transition and coordination with the NOx SIP Call, how to handle carryover of banked allocations; how to handle trading between units that are either in the 126 rule or in the NOx SIP rule; and what to do with the different allowances under each rule. Indiana-Kentucky Electric Corporation believes that many of the policy issues should be resolved prior to preliminary adoption and that the board should preliminarily adopt a rule that is as close to the final rule as possible.

Mr. Michael Belwood, representing ALCOA Warrick Operations in Southern Indiana, distributed handouts to the board and commented on the rulemaking by expressing concerns about the allocation of NOx credits to industrial boilers. Mr. Belwood confirmed that both ALCOA's and IDEM's allocation method reached the same result of 9,855 tons which represents the total NOx budget for industrial boilers. However, IDEM's allocation method would actually create winners and losers. ALCOA's proposed allocation method reaches the same NOx goal, 9,855 tons, but distributes the credits more evenly among those who are effected. ALCOA requested that the board preliminary approve ALCOA's method of allocating NOx credits that distributes credits more evenly among those who are effected as a fairer way to achieve the emission reduction goal.

Mr. James Hoff, representing Firestone Building Products, endorsed and supported the energy efficiency set-aside provisions of the rule.

Mr. Steve Loeschner, a resident of Allen County, commented on the rulemaking by focusing on health concerns and the cost of the rule. Mr. Loeschner did not support the rule as it was written, and asked the board to amend the rule "to include any pollution control equipment that is installed and found operable shall be operable for the entire year."

Mr. James Morris, representing Environ Power, distributed handouts to the board members, and commented on new source set-asides and allotments needed in the 2007-2009 time frame. Enviro Power advocated for ten percent of the EGU budget, new sources set-asides for six years or an annual allocation. He also advocated returning unused allowances to the pool to be returned to all sources on a prorated basis.

Mr. Mark Shere, representing Indianapolis Power & Light, commented on the flexibility and penalties of the rule. He also expressed concerns about rule language. Mr. Shere asked the board to use its flexibility regarding the compliance date and penalties before presenting the rule for final adoption. Mr. Shere recommended that the board defer preliminary adoption of the rule for a few months in order to allow IDEM to make changes to the rule.

Mr. Terry Hogan, representing Indianapolis Power & Light, acknowledged that Janet McCabe and her staff have sought out and involved as many interested parties as possible, representing a wide diversity of opinions and philosophies to shape the draft rule. Mr. Hogan asked the board to make changes to the draft rule prior to preliminarily adopting the rule. IPL supports

the need for crediting voluntarily and verifiable NOx emission reductions from multiple area source sectors; believes that IDEM needs to provide a clear and concise statement that the installation of pollution control equipment modifications to comply with the NOx SIP rule are exempt from new source permitting requirements; believes that permitting requirements for NOx emission control projects would likely result in further delays in compliance with the NOx SIP rule requirements for affected sources; asked the board to direct IDEM to provide clarity and a concise statement that compliance control modifications required to meet the requirements of the rule are environmentally beneficial and require no permits. IPL supports the need to revise 326 IAC 10-4-9 (c) which addresses the issue of NOx allowance allocations for large electricity generating units. IPL endorses the energy efficiency renewable energy measure proposal as currently written at 326 IAC 10-4-9 (e).

Mr. Mark Strimbu, NiSource Corporation, speaking on behalf of the Indiana Electric Utility Air Work Group (American Electric Power, Cinergy Corporation, Hoosier Energy, Indianapolis Power & Light, Indiana-Kentucky Electric Corporation, Northern Indiana Public Service Company, Mirant Corporation, and Vectren Corporation), recommended extending the current rulemaking schedule by a few months to give IDEM, EPA and affected parties involved additional time to work through some of the more difficult policy issues. Concerns addressed include applicability; the majority of the IEUAWG support exempting from the NOx rule sources that are subject to the Section 126 rules. IDEM should advocate to EPA in support of withdrawal of the Section 126 rule once Indiana submits a SIP compliant rule. Mr. Strimbu expressed concerns with the proposed language that addresses the complexities of the transition that would be needed to incorporate the Section 126 affected sources into the SIP call program. He stated that it would be inappropriate for IDEM to expand this rule to include the Section 126 requirements for those sources affected by both rules. He stated that the majority of his members: support IDEM's approach of calculating allowances based on the average for the highest two years of heat input data between 1995 and 1999; support IDEM's approach of using a multi-year allocation period; believe that the new source set-aside should be allocated on a first-come first-served basis based on the date the source is issued and approved construction permit; believe that new source should be required to return any unused allowances; believe that those allowances should be allocated to other new sources that did not receive a sufficient allocation from the set-aside before being returned to existing sources; believe that IDEM should address electric systems reliability concerns by either doubling the size of the compliance supplement pool but limiting its use to early reduction credits or adopt the approach advocated by Ohio. Mr. Strimbu addressed the issue of new source set-aside allowances for future new sources. Mr. Strimbu opposed IDEM's proposed participation of the non-EGU's in the compliance supplement pool and further opposed on-site retention of records. Mr. Strimbu recommended postponing the preliminary adoption of the proposed rule in order to give IDEM the opportunity to work through the unresolved issues that needs to be worked through with EPA.

Mr. Andy Knott, Hoosier Environmental Council, expressed support for a clean energy set-aside but urged the board to support a clean energy set-aside larger than 2%. He also

expressed concern about the types of projects that would qualify. Mr. Knott urged the board to preliminarily adopt the rule as drafted. Mr. Knott disbursed handouts to the board members.

Mr. Grant Smith, Citizens Action Coalition, supports IDEM's decision to insert a clean-energy set-aside for the rule.

Mr. Bill Hayden, Sierra Club in Indiana, Hoosier Chapter, urged the board to preliminarily adopt the rule, and then increase the set-aside for energy efficiency and clean energy.

Ms. Linda Hamilton, an individual representing concerned citizens in Grant County, disbursed a handout and asked the board to move forward with the rule. Ms. Hamilton made three points: 1) The percentage of pollution allowances should be greater than two percent; it should be up to 20% and be set aside for energy efficiency and renewable projects. 2) The 5% set-aside for new energy sources should incorporate renewable types of energy. 3) Stricter controls need to be put in place to protect affected citizens from peaker plants being permitted as minor sources.

Mr. Mike Brown, representing American Electric Power, and representing Indiana Michigan Power, endorsed the recommendation of the Indiana Electric Utilities Air Work Group, by suggesting that the board temporarily place the rule on hold so that policy and technical issues could be addressed including: a discussion of the various policy issues relating to the NOx SIP Call rule and the Section 126 rule; allowance allocations; and small source exemption.

Mr. David Hatchet, Barker & Daniels, on behalf of Tenaska, commented on the rulemaking by expressing concerns of the new source set-aside found in 326 IAC 10-4-9(e), including the size of the set-aside and the time it takes a new source to get out of the new source set-aside and into the existing source pool.

Mr. Paul Reynolds, Hoosier Energy Rural Electric Cooperative, supports preliminary adoption of the rule.

Ms. Ann McIver, Citizens Thermal Energy a division of Citizens Gas and Coke Utility, supports the allocation methodology presented by ALCOA.

Mr. Stan Pinegar, Indiana Petroleum Council, expressed concerns with continuous emissions monitoring and asked for alternative monitoring provisions and a revision to the current permitting thresholds for nonattainment areas for NOx in order to expedite permits.

Ms. Mary Schoen, representing Enron Corporation, supports the energy efficiency renewable energy set-aside within the NOx SIP rule.

Mr. John Ross, NiSource, requested the board not to adopt the rule until provisions are included that give credit for clean-energy projects that result in significant NOx reductions for displacement or replacement of energy from NOx budget units. As an alternative, NiSource requests that future allocations could be determined by an allocation method based upon an output-based system.

Mr. Jim Carson, Ispat Inland, requested alternate monitoring capabilities in the rule. He stated that encouraging the use of a lower cost monitoring system would probably influence a source to burn a lower NOx fuel.

Mr. Don Fulkerson, Indiana-Kentucky Electrical Corporation, supported Tony Sullivan's formal comments and asked the board to delay preliminarily adoption of the rule.

Dr. Miner moved to preliminarily adopt new rules 326 IAC 10-3 and 326 IAC 10-4. Mr. Anderson seconded. The motion passed unanimously.

6. Chairman Walker introduced Exhibit 3A, the rule as preliminarily adopted and Exhibit 3B, the rule as preliminarily adopted and proposed for final adoption with suggested changes, into the record of the hearing.

Ms. Watson commented on the rulemaking by stating that these are incorporations of the federal national emission standards for hazardous air pollutants. Ms. Watson stated that this rule was preliminarily adopted at the December, 2000 board meeting. The changes between preliminary adoption and the final rule for adoption reflect incorporation of recent EPA amendments.

Mr. Bacone moved to preliminarily adopt the amendments to rule 326 IAC 20-23 and new rules 326 IAC 20-33 through 47. Mr. Cundiff seconded. The motion passed unanimously.

Mr. Horn moved to final adopt the amendments to rule 326 IAC 20-23 and new rules 326 IAC 20-33 through 47. Dr. Miner seconded. The motion passed 10-0.

CONSIDERATION OF FINAL ADOPTION OF

AMENDMENTS TO RULE 326

IAC 20-23, off-site waste and recovery operations; and new rules 326 IAC 20-33, pulp and paper production, noncombustion; 326 IAC 20-34, phosphoric acid manufacturing and phosphate fertilizers production; 326 IAC 20-35, tanks level 1; 326 IAC 20-36, containers; 326 IAC 20-37, surface impoundments; 326 IAC 20-38, individual drain systems; 326 IAC 20-39, closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process; 326 IAC 20-40, equipment leaks control level 1; 326 IAC 20-41, equipment leaks control level 2; 326 IAC 20-42, oil-water separators and organic-water separators; 326 IAC 20-43, storage vessels (tanks) control level 2; 326 IAC 20-44, generic maximum achievable control technology standards; 326 IAC 20-45, pesticide active ingredient; 326 IAC 20-46, mineral wool

7. Chairman Walker introduced Exhibit 4A, the rule as preliminarily adopted and Exhibit 4B, the rule as preliminarily adopted and proposed for final adoption with suggested changes, into the record of the hearing.

Ms. Watson commented on the rulemaking by stating that this is a final adoption of three national emission standards for hazardous air pollutants. There were no changes other than cleaning up the reference to the Office of Air Quality, as well as the CFR and Federal Register references.

Mr. Bacone moved to preliminarily adopt the amendments to new rules 326 IAC 20-30 through 326 IAC 20-32. Mr. Anderson seconded. The motion passed unanimously.

Mr. Harmon moved to final adopt new rules 326 IAC 20-30 through 326 IAC 20-32, as amended. Mr. Cundiff seconded. The motion passed 10-0.

8. Chairman Walker introduced Exhibit 5A, the rule as preliminarily adopted and Exhibit 5B, the rule as preliminarily adopted and proposed for final adoption with suggested changes, into the record of the hearing.

Ms. Watson commented on the rule making by stating that this is a final adoption of a federal NESHAP. The only changes are to references to Office of Air Quality and some minor changes to the Code of Federal Regulations and Federal Register.

Mr. Horn moved to preliminarily adopt the amendments to new rule 326 IAC 20-27-1. Dr. Miner seconded. The motion passed unanimously.

Dr. Miner moved to final adopt new rule 326 IAC 20-27-1. Mr. Anderson seconded. The motion passed 10-0.

9. Chairman Walker introduced Exhibit 6A, the rule as preliminarily adopted and Exhibit 6A, the rule as preliminarily adopted and proposed for final adoption with suggested changes, into the record of the hearing.

**CONSIDERATION
OF FINAL
ADOPTION OF NEW
RULES 326 IAC 20-30,
Incorporation of
National Emissions
Standards for
Hazardous Air
Pollutants for Oil and
Natural Gas
Production; 326 IAC
20-31 Natural Gas
Transmission and
Storage; and 326 IAC
20-32, Publicly Owned
Treatment Works**

**CONSIDERATION OF
FINAL ADOPTION OF
NEW RULE 326 IAC 20-
27-1, Portland Cement
National Emission
Standard for Hazardous
Air Pollutants**

**CONSIDERATION OF
FINAL ADOPTION OF
NEW RULE 326 IAC 20-
28-1, Hazardous Waste
Combustor National
Emission Standards for
Hazardous Air Pollutants**

Ms. Watson stated that the rule had been brought to the board in September, 2000, at which time there was a pending lawsuit against EPA concerning the underlying federal rule. Since that time, there has been an order in that case. IDEM has made some changes to the rule to reflect what came out of that order.

Mr. Cundiff moved to preliminarily adopt the amendments to rule 326 IAC 20-28-1. Mr. Harmon seconded. The motion was carried unanimously.

Mr. Anderson moved to final adopt rule 326 IAC 20-28-1 as amended. Dr. Miner seconded. The motion passed carried 10-0.

10. The next meeting will be on March 7, 2001, at 1:00 p.m., in the Government Center South, Conference Room C Indianapolis, Indiana. **NEXT MEETING**

11. Chairman Walker adjourned the meeting at 5:39 p.m. **ADJOURNMENT**

John Walker, Chairman

These minutes were taken from the February 7, 2001 transcript, and were written on May 23, 2001, by Karol Chuma, Office of Air Quality.